

PT 98-34

Tax Type: **PROPERTY TAX**

Issue: **Charitable Ownership/Use**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**FACETS MULTIMEDIA INC.,
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No: 93-16-459

**Real Estate Exemption
for 1993 Assessment Year**

P.I.N. 14-32-101-003

Cook County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Robert S. Blatt of Katz, Randall & Weinberg on behalf of applicant Facets Multimedia, Inc.

SYNOPSIS: This proceeding raises the issue of whether Cook County Parcel Index Number 14-32-101-003 (hereinafter the “subject property”) should be exempt from 1993 real estate taxes under sections 19.1 (school exemption) and 19.7 (charity exemption) of the Revenue Act of 1939.¹

This controversy arose as follows:

¹ In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable provisions are those found in the Revenue Act of 1939 (35 ILCS 205/19.1, 19.7 (1992)).

On November 1, 1993, Facets Multimedia Inc. (hereinafter “FMI” or “applicant”), filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals. The Board reviewed FMI’s complaint and on February 10, 1994², recommended that the exemption be granted. August 24, 1995, the Illinois Department of Revenue rejected the Board’s recommendation and denied the exemption concluding that the subject property was not in exempt ownership or exempt use. FMI filed a timely appeal from the Department’s denial of exemption. On June 9, 1997, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the subject parcel not be exempted from 1993 real estate taxes.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject parcel was not in exempt use or exempt ownership during 1993.
2. The subject property is located at 1517 West Fullerton Avenue, in Chicago and is improved with a three-story building, which has approximately 6,000 square feet per floor. Dept. Gr. Ex. 1; Tr. p. 16.
3. FMI acquired the subject property via a warranty deed dated March 1, 1977. App. Ex. 1.

² The date shown on the recommendation is actually February 10, 1993, however this was obviously a clerical error since the recommendation would not have been rendered prior to the filing of the complaint.

4. On March 31, 1982, the subject property was placed in Trust No. 54927, which lists FMI as the trust beneficiary. App. Ex. 3.
5. No portion of the building was leased in 1993. Tr. p. 20.
6. The first floor consists of an open classroom where workshops and classes are held, a video projection classroom, a large film-screening room, a lobby, washrooms, entrances and exits. Tr. p. 16.
7. The second floor contains office space, a classroom conference space and washrooms. Tr. p. 16.
8. The basement consists of a mailroom, an audiovisual library and workshop space, and a video library. Tr. p. 16.
9. Approximately one-third of the building is used for classroom space, one-third for office and storage space and one-third for library and miscellaneous use. App. Ex. 8.
10. FMI is organized as a not-for-profit corporation. App. Ex. 5.
11. FMI's amended articles of incorporation provide, *inter alia*, that:
 - (a) FMI was organized exclusively for the charitable and educational purposes of teaching the theatrical and cinematic arts;
 - (b) that no part of FMI's earnings shall inure to the benefit of any private shareholder or individual; and

(c) upon dissolution of the organization, any remaining assets will be used for charitable, educational or other such tax-exempt purposes.

App. Ex. 5.

12. FMI has no capital stock or shareholders. App. Ex. 5, 7.
13. In 1993, approximately 9,000 elementary and junior high school age children from over 300 schools and daycare programs visited the subject property for theatre and film classes. Tr. pp. 17, 22.
14. FMI provides teachers from the visiting schools with materials, which can be incorporated into their regular curriculums. Tr. pp. 14.
15. FMI rents out videos, which are used for in-classroom educational purposes. Tr. p. 16.
16. FMI sells videos relating to cultural history and assists libraries and educational institutions in developing collections in specific areas such as the history of World War Two and African American History. Tr. p. 26.
17. FMI provides adult education courses in the history of the cinema, which are six-week sessions offered six times a year. Although FMI charges \$95 per adult session, they do not make a profit from these sessions and often lose money despite subsidies from outside organizations. Tr. pp. 15, 20.
18. The payment of fees is never a prerequisite for a child or adult taking part in a class. Those unable to pay are allowed to attend free of charge. Tr. p. 17.
19. The adult fee was waived approximately 15% of the time. Tr. p. 21

20. The children's fees are between \$2 and \$3 per student and are waived approximately 50% of the time. FMI actively solicits children from the inner city who would not otherwise have the opportunity to attend such courses and makes sure that they are admitted free of charge. Tr. p. 21.
21. A person has the option of becoming a member for \$35. Members acquire no benefits that are not available free of charge to the general public apart from the right to vote on administrative issues. Tr. p. 27; App. Ex. 6.
22. FMI is subsidized, in part, by grants from programs such as the Illinois Arts Council, the National Endowment for the Arts, and the City of Chicago. Tr. p. 18.
23. FMI's income in 1993 was \$1,750,304 and was derived primarily as follows:
- (a) 69% video sales
 - (b) 11% memberships
 - (c) 7% public and private grants
 - (d) 6% box office, special screenings and concessions
 - (e) 5% video rentals
- App. Ex. No. 7.
24. FMI's expenses in 1993 were \$1,864,276 and consisted primarily of the following:
- (a) 33% salaries and payroll taxes
 - (b) 21% management and general expenses
 - (c) 20% mailing costs
 - (d) 13% office supplies, printing, and freight charges.
 - (e) 4% advertising and public relations
- App. Ex. No. 7.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1993 tax year. Accordingly, under the reasoning given below, the determination by the Department that the subject property does not qualify for exemption should be affirmed. In support thereof, I make the following conclusions:

Statutes exempting property from taxation are to be strictly construed in favor of taxation. Harrisburg-Raleigh Airport Authority v. Dep't of Revenue, 126 Ill. 2d 326, 331 (1989). Moreover, in determining whether property is included within the scope of a tax exemption, all facts are to be construed and all debatable questions resolved in favor of taxation. City of Chicago v. Dep't of Revenue, 147 Ill. 2d at 484, 491-92 (1992). In addition, the taxpayer seeking the exemption bears the burden of proving by clear and convincing evidence that the exemption applies. Evangelical Hospitals Corp. v. Dep't of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991).

FMI first argues that the subject property should be exempt from property taxes because it is a school. FMI relies on Section 19.1 of the Revenue Act of 1939 which provides an exemption from property taxes for:

all property of schools *** including the real estate on which the schools are located and any other real property used by such schools exclusively for school purposes, not leased by such schools or otherwise used with a view to a profit[.] 35 ILCS 205/19.1 (1992).

There are two primary factors to be considered when determining whether a given property constitutes a school under the Revenue Act of 1939: (1) whether the property in

question contained a school which offered an established, commonly accepted program of academic instruction and (2) whether the program in question substantially lessened what would otherwise have been a governmental obligation. Coyne Electrical School v. Paschen, 12 Ill. 2d 387, 392-93 (1957).

Obviously, the film and theatre courses FMS offered do not fall into the traditional academic subject areas such as math, language, science or history. Nevertheless, FMI's courses do, arguably, constitute a commonly accepted program of academic instruction in the "fine arts." See 105 ILCS 5/27-1 (1992) (Fine arts is an area necessary for children's development and entry into the world of work.). However, even assuming that FMI's courses do constitute a commonly accepted program of academic instruction, there was no evidence that the program in question substantially lessened what would otherwise have been a governmental obligation.

Even if there is a statutory obligation for the government to provide fine arts education for children (105 ILCS 5/27-1 (1992)), I am unaware of any such provision relating to fine arts education for adults and applicant has failed to cite to any such provision. Additionally, although FMI's programs were educational, they were simply brief supplements to, and not a replacement for, programs offered by the public schools. See People v. Turnverein Lincoln, 8 Ill. 2d 198, 202 (1956) (no school exemption where applicant offered classes in swimming and gymnastics since physical education was "a part, but only a part," of an ordinary schools curriculum). Because FMI's programs did not substantially lessen what would have otherwise been a government obligation, FMI does not qualify as a school and a school exemption is unwarranted.

Even if it is assumed, for the sake of argument, that FMI did qualify as a school, it would still be inappropriate to grant the subject property a school property tax exemption because FMI did not establish that the subject property was used “exclusively for school purposes.”³ 35 ILCS 205/19.1 (1992). Specifically, the applicant failed to offer evidence establishing such facts as how much of the building was used for classes as compared with how much of the building was used for the ordering, producing, selling, renting and mailing of videos. Absent some such evidence establishing that the building was used primarily for school purposes and that the other uses were only secondary or incidental, the subject property is not entitled to a property tax exemption as a school. Coyne, 12 Ill. 2d 387.

FMI next argues that the subject property is entitled to a charitable exemption. Taxpayer relies on section 19.7 of the Revenue Act of 1939 which provides an exemption from property taxes for:

All property of institutions of public charity, *** when such property is actually and exclusively used for such charitable or beneficent purposes and not leased or otherwise used with a view to a profit[.] 35 ILCS 205/19.7 (1992).

In accord with this statutory directive, a charitable exemption will be granted only where it is determined that the property in question is both owned by an institution of public charity and used primarily for charitable purposes. American College of Surgeons v. Korzen, 36 Ill. 2d 340 (1967).

Determining whether the subject property is owned by an institution of public charity is a two-step process. First, the owner of the subject property must be

³ The word “exclusively,” when used in tax exemption statutes means “the primary purpose for which the property is used and not any secondary or incidental purpose.” Gas

ascertained. Here, title to the subject property is held in Trust No. 54927. FMI is the beneficiary of Trust No. 54927. The beneficiary of a land trust is the owner for tax purposes. People v. Chicago Title & Trust, 75 Ill. 2d 499 (1979). Thus, for tax purposes, FMI is the owner of the subject property.

Since FMI owns the property, the next step is to determine whether FMI is an institution of public charity. FMI's amended articles of incorporation provide, *inter alia*, that: FMI was organized exclusively for the charitable and educational purposes of teaching the theatrical and cinematic arts. However, merely because an organization's governing legal documents set forth an exclusively charitable intent does not relieve the organization of the burden of proving it actually operates as a charitable institution. See Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968).

In Methodist Old People's Home, our supreme court set forth five factors to be considered in assessing whether an organization is actually an institution of public charity. According to Methodist Old People's Home, institutions of public charity: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with it; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home, 39 Ill.2d at 157. These factors are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the institution serves the

Research Institute v. Dep't of Revenue, 154 Ill. App. 3d 430 (1st Dist.1987).

public interest and lessens the State's burden. Du Page County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995).

Applying the guidelines from Methodist Old People's Home, I find that although FMI has established it has no stock or shareholders, it has failed to present clear and convincing evidence that it possessed the remaining four characteristics of charitable institutions. First, because there was no evidence that FMI ever waived the fees for its video sales, there remains some question as to whether FMI dispenses charity to all who need and apply for it. Second, it is somewhat unclear whether FMI provides gain or profit in a private sense to any person connected with it, since FMI expends well over \$500,000 per year on salaries yet failed to present any evidence to show that those salaries are not so high that the employees are the primary beneficiaries of FMI's activities. Lutheran General Health Care v. Dep't of Revenue, 231 Ill. App. 3d 652, 662 (1st Dist. 1992). Third, because approximately 80% of FMI's income came from video sales, rentals, box office receipts and concessions, it does not appear that FMI derived its funds mainly from public and private charity. Finally, since there was no testimony that FMI ever waived fees for its video sales, FMI did not prove that it placed no obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.⁴

⁴ This failure of proof is limited to video sales. Although FMI requests nominal fees for classes and video rentals, there was testimony that these fees were waived for those who could not afford to pay. Thus, such fees would not necessarily preclude FMI from qualifying as a charitable institution. People v. Y.M.C.A. of Chicago, 365 Ill. 118, 122 (1936) ("An institution does not lose its charitable character by reason of the fact that the recipients of its benefits who are able to pay are required to do so, where no profit is made by the institution and the amounts so received are applied in furthering its

In sum, based upon the limited evidence presented at the hearing, it remains unclear whether FMI was: (1) in the business of selling and distributing videos and incidentally offered classes; or (2) primarily concerned with offering public education in the cinematic and theatrical arts and only incidentally involved in the sale and distribution of videos.⁵ Under these circumstances, FMI has failed to establish that it qualifies as an “institution of public charity” within the meaning of section 19.7 of the Act (35 ILCS 205/19.7 (1992)).

Because FMI failed to establish that it is an institution of public charity, the question of whether the subject property was used primarily for charitable purposes in 1993 has become technically moot. However, even if the question of charitable use were not mooted by the applicant’s failure to establish charitable ownership, the subject property would still not qualify for exemption because the applicant did not establish that the subject property was used exclusively for charitable purposes.

charitable purposes and those benefits are refused to none on account of inability to pay therefor.”)

⁵ It is worth noting that dividing FMI’s 1993 video sales income (\$1,203,299) by the number of students who attended FMI classes in 1993 (approximately 10,000) reveals that FMI had over \$100 in video sales for every student who attended a class.

“The concept of property use which is exclusively charitable does not lend itself to easy definition. Therefore each individual claim for tax exemption must be determined from the facts presented.” Methodist Old Peoples Home, 39 Ill. 2d at 156-57.

Here, the applicant apparently intended to show that the subject property was used primarily for the purpose of providing education in the cinematic and theatrical arts to the general public. Such educational activities might constitute a charitable purpose since they promote the well being of society. See American College of Surgeons, 36 Ill. 2d at 347 (noting that the law recognizes as charitable those purposes which will benefit an indefinite number of persons by the influence of education); *cf.* People v. Y.M.C.A. of Chicago, 365 Ill 118, 122 (1937) (noting that charity is not confined to relief of poverty or distress, but embraces the improvement and promotion of the happiness of man.). However, the applicant failed to provide clear and convincing evidence that the subject property was in fact used primarily for the purpose of providing such education. Rather, given the substantial revenues generated by the sale of videos, it appears equally possible that the subject property was used primarily for selling and distributing videos, a use that is analogous to the income-producing use held to be non-exempt in Salvation Army v. Dep’t of Revenue, 170 Ill. App. 3d 336 (2nd Dist. 1988).

Simply stated, it remains unclear whether the subject property was used: (1) primarily for educational purposes and incidentally for selling and distributing videos; or (2) primarily for selling and distributing videos and only incidentally for educational purposes. Under these circumstances it would be improper to conclude that the subject property was used exclusively for charitable purposes.

In conclusion, the subject property does not qualify for a school exemption because the courses offered did not substantially lessen what otherwise would have been a government obligation. Likewise, the subject property does not qualify for a charitable exemption because FMI failed to provide clear and convincing evidence that it is an institution of public charity.

WHEREFORE, for the reasons set forth above, I recommend that the subject parcel be denied exemption from 1993 real estate taxes.

Date

Robert C. Rymek
Administrative Law Judge